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U.S. Department of Justice

Immigration and Naturalization Service

Identification of the individual to
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invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [REDACTED] Office: Nebraska Service Center

Date: 28 FEB 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER:

[REDACTED]

Public Copy

INSTRUCTIONS:

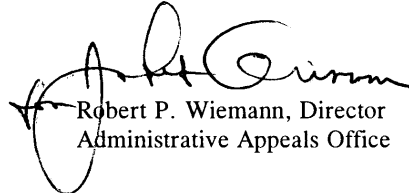
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. An appeal was dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on motion to reconsider. The motion will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ him as a minister.

The petitioner filed a Form I-360 petition for special immigrant classification on September 16, 1999. The petition was denied in a decision dated July 13, 2000. The petition was denied on the grounds that the petitioner failed to submit sufficient evidence to establish that the beneficiary was a recognized minister of religion or that he had been continuously and solely carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

The petitioner, by and through counsel, filed an appeal from the decision with an appellate brief and additional evidence. The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), dismissed the appeal finding that the petitioner had failed to overcome the grounds for denial.

The petitioner now files a motion to reconsider the decision and asserts that the evidence is sufficient to demonstrate eligibility.

According to 8 C.F.R. 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. To prevail on a motion for reconsideration, the petitioner must establish that the prior decision rests on an incorrect application of law, so that the decision "was incorrect based on the evidence of record at the time of the initial decision." Id. According to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

Counsel has not presented new evidence that was previously unavailable and has not established that the prior decision was an incorrect application of law. Counsel essentially seeks a readjudication of the underlying petition and a waiver of the thirty-day appeal period. There is no provision for such an adjudication on a motion to reopen or a motion to reconsider. Counsel has failed to establish that this action meets the applicable requirements of a motion and it must be dismissed.

The petitioner is free to file a new petition without prejudice.

ORDER: The motion is dismissed.